

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION**

In re the case of:

IN THE STATE COURT OF DOUGHERTY COUNTY, GEORGIA

CANDACE J. THOMAS and DUDLEY	*
THOMAS, III, individually and as parents	*
of DARIUS M. THOMAS, deceased and	*
CANDACE J. THOMAS and DUDLEY	*
THOMAS, III, as administrators of the	*
ESTATE OF DARIUS M. THOMAS,	*
	*
Plaintiffs,	*
	*
vs.	*
	CIVIL ACTION NO.: 17 SCV 80
	*
PHOEBE PUTNEY HEALTH SYSTEM,	*
INC., PHOEBE PUTNEY HEALTH	*
VENTURES, INC., PHOEBE PUTNEY	*
MEMORIAL HOSPITAL, INC., PHOEBE	*
PHYSICIAN GROUP, INC., ALBANY	*
AREA PRIMARY HEALTHCARE, INC.,	*
and CHERYL G. TOLLIVER, M.D.,	*
	*
Defendants.	*

**NOTICE OF REMOVAL
NOTICE OF SUBSTITUTION**

**TO: The United States District Court for the Middle District of Georgia,
Albany Division**

REMOVAL

PLEASE TAKE NOTICE THAT pursuant to 42 U.S.C. §§ 233(a) and 233(c) and on behalf of Defendants named above Albany Area Primary Health

Care, Inc. (hereinafter AAPHC); Dr. Cheryl G. Tolliver (hereinafter Dr. Tolliver), and for the United States of America, Charles E. Peeler, United States Attorney for the Middle District of Georgia, by and through his designee Assistant United States Attorney for the Middle District of Georgia Stewart R. Brown, respectfully submits this Notice of Removal and in support and explanation thereof shows:

1. AAPHC and Dr. Tolliver are hereinafter referred to as the Federal Defendants. By removing this case on their behalf, the United States does not admit that they or it are subject to the jurisdiction of the Court or that they have been properly served. The effect of removal is to simply establish that the suit against them should have only been filed in the United States District Court for the Middle District of Georgia and named only the United States as a Defendant in their stead.

2. The above-captioned State Court of Dougherty County, Georgia case in which the Federal Defendants are named therein as among the Defendants was pending in that Court prior to the filing of the within, and no trial has been had or set. Copies of the entire record in that action are attached to this Notice of Removal as Exhibit A, consisting of 154 pages as of May 4, 2018.

3. Discussed more fully hereinafter, the Federal Defendants are deemed employees of the Public Health Service and the complaint against them in the State Court of Dougherty County, Georgia shows that they are being sued by the

plaintiff for actions they took while acting in that capacity in the course and scope of their employment.

4. The plaintiff in the above-captioned State Court action seeks damages from the defendants for alleged negligent acts or omissions in the course and scope of their employment in allegedly providing care to Darius M. Thomas.

5. Congress has provided in 42 U.S.C. § 233(a) that the exclusive remedy for such a claim against the Federal Defendants is against the United States under 28 U.S.C. §§ 1346(b) and 2671 et seq., the Federal Tort Claims Act (FTCA) and 42 U.S.C. § 233(a).

6. Under the FTCA, only United States District Courts have jurisdiction over such claims as are made in the above-captioned State Court of Dougherty County, Georgia case against the Federal Defendants.

7. Congress has provided in 42 U.S.C. § 233(c) that such an action commenced in a State court shall be removed to the proper United States District Court upon certification by the Attorney General that defendants were acting in the scope of their employment at the time of the incident out of which the suit arose. Under the allegations of the Plaintiff in the above-captioned State Court of Dougherty County, Georgia case, the proper United States District Court is the District Court for the Middle District of Georgia, Albany Division.

8. The certification called for by 42 U.S.C. § 233(c), made by the United States Attorney for the Middle District of Georgia under the said statute and pursuant to 28 C.F.R. § 15.4(b) is attached hereto as Exhibit B. The above-captioned civil action is therefore deemed to be one dealt with in the said statute and regulation.

9. Likewise removed herewith are the claims against the Defendants other than the Federal Defendants, over and against whom or which the United States District Court for the Middle District of Georgia shall have and exercise supplemental jurisdiction under 28 U.S.C. § 1337(a), unless and until the said Court shall direct to the contrary.

WHEREFORE, defendants, AAPHC and Dr. Tolliver and the United States of America give notice that the above-captioned action, pending in the State Court of Dougherty County, Georgia, is removed to the United States District Court for the Middle District of Georgia, Albany Division, under and pursuant to 42 U.S.C. § 233(c).

This the 9th day of May, 2018.

Respectfully submitted,
CHARLES E. PEELER
UNITED STATES ATTORNEY
MIDDLE DISTRICT OF GEORGIA
ATTORNEY FOR THE UNITED STATES
AND THE FEDERAL DEFENDANTS

By: /s/ Stewart R. Brown
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CERTIFICATE OF SERVICE

I, Stewart R. Brown, Assistant United States Attorney, hereby certify that on the 9th day of May, 2018, I electronically filed the foregoing Notice of Removal and Exhibits A and B thereto with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: N/A.

I also certify that I have mailed by the United States Postal Service the documents (omitting Exhibit A because they have had those documents) and a copy of the Notice of Electronic Filing to the following non-CM/ECF participants:

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This 9th day of May, 2018.

/s/ Stewart R. Brown

Stewart R. Brown
Assistant United States Attorney